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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 567

INEZ TYLER BELLINGER MUTCHERSON,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Appellee.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

INEZ TYLER BELLINGER MUTCHERSON, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals Fifth Circuit, entered in the above styled case on April 21, 1967, affirming the petitioner's convictions and a Motion for Rehearing was filed in the United States Court of Appeals Fifth Circuit within the time provided by law which was denied on the 3rd day of July, 1967, and an Order extending the time to file a petition for Writ of Certiorari was granted on the 31st day of July, 1967, to be extended to and including September 1, 1967.

OPINION BELOW

The Opinion of the Circuit Court of Appeals for the Fifth Circuit in the case is attached hereto as Appendix A, in this petition, and the order denying rehearing marked Appendix "B".

JURISDICTION

The judgment of the Circuit Court for the Fifth Circuit was entered on the 21st day of April. On July 31, 1967, Mr. Justice Black extended the time for filing this petition to and including September 1, 1967.

The jurisdiction of this Court is invoked under Title 28, U.S.C., Section 2101 (f).

QUESTIONS PRESENTED

1.

Whether the arresting officers' conduct in effectuating the arrest in the instant case, and the subsequent prosecution of INEZ TYLER BELLINGER MUTCHERSON, to the exclusion of RUDOLPH VAUGHN who was arrested with her at the same time and place and under the same circumstances violated the Due Process Clause of the Fourteenth Amendment?

2.

Whether "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures" violated as to INEZ TYLER BELLINGER MUTCHERSON, so as to cause the search warrant and the search based thereon to be illegal and to require suppression of evidence seized thereunder.

STATEMENT OF FACTS

On October 17, 1964, treasury agents conducted a raid at 616 West 37th Street, Savannah, Georgia, where INEZ TYLER BELLINGER MUTCHERSON and RUDOLPH VAUGHN were arrested.

This raid was conducted under the authority of a federal search warrant.

Two items peculiar to a bolita operation were seized in the raid. In an upstairs bedroom of the house were found INEZ TYLER BELLINGER MUTCHERSON, and RUDOLPH VAUGHN. During a search of this bedroom, a sheet of paper was found on the bed, on which was written a list of names, and on dresser the agents found an alleged lottery tally sheet listing names and amounts of alleged bolita bets. INEZ TYLER BELLINGER MUTCHERSON and RUDOLPH VAUGHN were then placed under arrest.

INEZ TYLER BELLINGER MUTCHERSON was prosecuted for violating the Internal Revenue Code (3) Counts, and after petitioner's motion to suppress was denied by the District Court, the evidence seized in the raid was introduced on her trial, and petitioner was adjudged guilty and sentenced to one (1) year on each of said counts, the sentences to run concurrently, and fined Five Thousand ($5,000.00) Dollars. RUDOLPH VAUGHN was never prosecuted tho arrested with your petitioner.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Fourteenth Amendment, Section 1:

> No State . . . shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

United States Constitution, Fourth Amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Sixth Amendment:

> "In all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor. . . ."

REASONS FOR GRANTING THE WRIT

The Court below failed to decide or pass on the validity of the search warrant.

The Fourth Amendment to the Constitution of the United States provides as follows:

> "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

The Fourteenth Amendment to the Constitution provides, in pertinent part, as follows:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

Mapp v. *Ohio*, 367 U.S. 643, 6 L. Ed. 2d 1081, 81 S. Ct. 1684 (1961), held that the Due Process Clause of the Fourteenth Amendment rendered evidence obtained by a search and seizure in violation of the Fourth Amendment inadmissible in a state court as it is in a federal court.

> "We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court.
>
> Since the IV Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government." (367 U.S. 655).

The opinion of the Court in Mapp, supra, stresses the relationship between unconstitutional seizures and unconstitutional confessions.

> Thus, "Unconstitutional seizures of goods, papers, effects, documents, etc. is said to be tantamount to coerced testimony." 376 U.S. at 656.

The Court further held in citing *Boyd* v. *U. S.*, 116 U.S. 616, 630, considering the Fourth and Fifth Amendments to the United States Constitution as running "Almost into each other." That these Amendments: "Apply to all invasions on the part of the government and its employees of the sanctity of a man's home and the privacy of life. It is not the breaking of his doors and the rummaging of his drawers that constitutes the essence of the offense; but it is the invasion of his indefensible right of personal security, personal liberty and private property . . . breaking into a house, opening the boss' drawers or circumstances of aggravation for any forceful and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of a crime or forfeit his goods, is within the condemnation of those amendments".

The Court noted:

> "Constitutional provisions for the security of person or property should be liberally contrued . . . it is the duty of course to be watchful for the Constitutional rights of the citizens and against any stealthy encroachment thereon."

In the case at bar, an affidavit was made by special agent Bill and employee Harris furnished a lengthy catalogue of circumstances none of which was corroborated, the affidavit further stated the affiant knew from a confidential and reliable source that defendant was allegedly operating a lottery among other things.

Where an arrest is purportedly predicated solely upon an alleged communication from a purported but unidentified "reliable informant", the arresting officer becomes the sole judge of the validity of his own arrest. No post-arrest judicial check is afforded and the accused, the trial court, the court of review, and ultimately this Honorable Court are completely precluded from ever determining the actual existence of an informer; in short, whether, in fact, there was probable cause for the issuance of the search warrant. Full and complete disclosure, not concealment and secrecy, should be the guide post. History has taught us that the police cannot be trusted with such serious matters. "Judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers." *U. S.* v. *Reynolds*, 345 U.S. 9, 97 L. Ed. 727, 734, 73 S. Ct. 528.

"Under our system, suspicion is not enough for an officer to lay hands on a citizen. It is better, so the Fourth Amendment teaches, that the guilty sometimes go free than that citizens be subject to easy arrest." *Henry* v. *United States*, 361 U.S. 98, 104, 4 L. Ed. 2d 134, 139, 80 S. Ct. 168.

From a practical standpoint, disclosure is the only possible method which adequately protects the right of a

citizen in a free society "to be secure in his person . . . against unreasonable searches and seizures."

Nondisclosure, it is submitted, greatly increases the propensity of the arresting officer to give perjured and/or embellished testimony, to say nothing of the proclivities of an informer (assuming there is one) to furnish false leads. Without disclosure, there is no adequate judicial check.

The Sixth Amendment guarantees an accused the rights of confrontation, cross-examination, and compelling witnesses in his behalf. These guarantees have already been held applicable to and binding upon the States. These rights are denied when the prosecution is allowed to cloak in secrecy a purported informer whose supposed communications are offered in any way against an accused.

Under other factual circumstances this Court has held that the Sixth Amendment Confrontation Clause applies, through the Fourteenth Amendment, to the States in a State prosecution:

> "We hold today that the Sixth Amendment's right of an accused to confront the witnesses against him is likewise a fundamental right and is made obligatory on the States by the Fourteenth Amendment." *Pointer* v. *Texas*, 380 U.S. 400, 403, 13 L. Ed. 2d 923, 85 S. Ct. 1065).

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

B. CLARENCE MAYFIELD
910 West Broad Street
Savannah, Georgia 31401
Attorney for Petitioner

PROOF OF SERVICE

I, B. CLARENCE MAYFIELD, Attorney for INEZ TYLER BELLINGER MUTCHERSON, petitioner herein, and a member of the Bar of The Supreme Court of the United States, hereby certify that on the 30th day of August, 1967, I served copies of the foregoing petition for a Writ of Certiorari on the party thereto and its attorneys by mailing a copy in a duly addressed envelope with adequate postage prepaid, as follows:

Hon. Allen L. Chancey, Jr.
Assistant U. S. Attorney
Old Post Office Building
Atlanta, Gerogia

Hon. Thurgood Marshall
Solicitor General
Office of the Solicitor General
Washington, D. C. 20530

.....

B. CLARENCE MAYFIELD
Attorney for Inez Tyler Bellinger Mutcherson

APPENDIX

APPENDIX "A"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 23954

INEZ TYLER BELLINGER MUTCHERSON,
Appellant,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Northern District of Georgia.

(April 21, 1967.)

Before BROWN and BELL, Circuit Judges, and BREWSTER, District Judge.

PER CURIAM: The appellant was convicted upon three counts charging wagering tax violations under 26 U.S.C.A. 7203. She argues that her convictions should be reversed because of insufficiency of the evidence, illegality of the search of her house, and prejudice of the judge. A consideration of each of these contentions shows them to be entirely without merit.

AFFIRMED.

APPENDIX "B"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 23954

INEZ TYLER BELLINGER MUTCHERSON,
Appellant,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Northern District of Georgia.

On Petition for Rehearing

(July 3, 1967)

Before BROWN and BELL, Circuit Judges, and BREWSTER, District Judge.

PER CURIAM:

It is ordered that the appellant's motion for rehearing in the above styled cause be hereby DENIED.

Petition for Rehearing filed 6/7/67.

Petition for Rehearing denied 7/3/67.